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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3161 OF 2017

Subrata Krishna Talukdar
and anr

... Petitioners

V/s.

M/s Globe Accessories Pvt. Ltd
and others

... Respondents

Mr. A. V. Anturkar, Senior Advocate, for the
Petitioners

Mr. P.P. Prabhu, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st FEBRUARY, 2018.

P.C. :

1] Heard learned Senior Counsel for the petitioners and
learned counsel for the respondents.

2] This order is passed in the presence of judgment debtor
who is present in the Court, in person.

3] By this writ petition filed under Article 227 of the
Constitution of India, the petitioner is challenging the order dated
21.1.2017, passed by Jt Civil Judge Senior Division, Pune, below
Exh.45 in Special Darkhast No.33 of 2015.

4] The facts of writ petition are to the effect that petitioners herein had filed suit bearing Special Civil Suit No.906 of 2009 for recovery of the amount. The suit came to be decreed and as per the decree, respondents were directed to pay an amount of Rs.1,19,21,044/- alongwith interest at the rate of 6% per annum from the date of filing of the suit till its realization. Against the said decree First Appeal (St) No.18324 of 2016 was preferred.

5] In Civil Application No.3047 of 2016 seeking stay to the execution of the said decree, this Court has, vide its order dated 31st August, 2016, granted 12 weeks time for depositing the entire decretal amount in the Court with a further direction that if the amount is not deposited within the stipulated period, stay will automatically stand vacated.

6] As respondents failed to deposit the amount, the petitioners filed Execution Proceeding before the trial Court and in that proceeding, the property of the respondent came to be attached on 08.02.2016. Thereafter petitioners filed application under Order 21 Rule 72 read with Section 73 of the Code of Civil Procedure, seeking permission to bid and purchase the scheduled property and to confirm the sale of the scheduled property in favour of the Decree Holders.

7] While this application was pending, respondent-judgment debtor moved an application, seeking demarcation of the property with a solution that if some part of the property would be excluded from the attachment, then there are chances that he can avail loans after mortgaging the remaining portion. In view of this solution, the Judgment Debtor was directed by the Executing Court to get the property properly demarcated to pass the appropriate order, regarding partial release of the property from attachment.

8] Accordingly on 21st January, 2017, respondent/judgment debtor furnished valuation report dated 16.1.2017 on record, showing that the total valuation of the property was Rs.6.40 crores. The Executing Court found that alongwith decreetal amount, including the interest thereon, claim of the Decree Holder would reach upto 2 crores and therefore, entire decree can be satisfied if the solution put forth by the judgment debtor could reach to its logical end. The Executing Court further held what remains is only the work of demarcation of the property and hence Executing Court, vide its impugned order, gave fair opportunity to the judgment debtor, so that decree can be fully satisfied, without causing any prejudice to the otherside. Accordingly adjournment was allowed for getting demarcated the part of the property, as proposed.

9] Against this order of the Executing Court, present writ

petition is preferred, mainly on the ground that the application preferred by the Decree Holder under Order 21 Rule 72 read with 73 of CPC was pending and without deciding the same the Executing Court has again granted time to Judgment Debtor for getting demarcated part of the property as proposed and thereby protracted the execution of the decree.

10] As by this time, the Judgment Debtor has got the property demarcated and produced the valuer's report, which is taken on record, and marked as "A" for identification, learned Senior Counsel for the petitioners-Decree Holders now fairly concedes that if the solution suggested by the Judgment Debtor is going to satisfy the entire decree, fair opportunity needs to be given to the Judgment Debtor, to take his solution to its logical end; therefore, petitioner/decreed holder is ready to grant the time upto 30th June 2018, with further period of two weeks, if required, for judgment debtor to sell or mortgage the property except the demarcated portion of the property, as shown in the valuer's report part II.

11] In view of this fair submission, the attachment order of the property stands vacated in respect of remaining portion of the property. It is, however, subject to condition that if the judgment debtor intends to sell/mortgage or create third party interest in respect of the remaining portion of the property, he cannot do so

without obtaining the permission of the Executing Court and the Executing Court will grant such permission subject to condition of depositing entire decretal amount in the Court.

12] In case, the solution suggested by the Judgment Debtor, as elucidated above, is not fructified, then entire property will come back under attachment after the stipulated period is over and the trial Court will decide Decree Holder's Application filed under Order 21 Rule 72 read with 73 of CPC, within two weeks thereafter.

13] Writ Petition is disposed off in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]